

1 AARON D. FORD
2 Attorney General of the State of Nevada
3 ERNEST D. FIGUEROA
4 Consumer Advocate and Chief Deputy Attorney General
5 LUCAS J. TUCKER, (NV Bar No. 10252)
6 Senior Deputy Attorney General
7 MICHELLE C. NEWMAN, (NV Bar No. 13206)
8 Deputy Attorney General
9 8945 W. Russell Road, Suite 204
Las Vegas, Nevada 89148
Telephone: (702) 486-3420
Email: LTucker@ag.nv.gov
Email: MNewman@ag.nv.gov
Attorneys for State of Nevada

10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 THE STATE OF NEVADA BY ITS
13 ATTORNEY GENERAL AARON D. FORD

14 Plaintiff,

15 v.

16 UNITEDHEALTH GROUP
17 INCORPORATED, a corporation;
18 COLLABORATIVE CARE HOLDINGS,
19 LLC, a limited liability company; DAVITA
20 INC., a corporation; and DAVITA MEDICAL
21 HOLDINGS, LLC, a limited liability
company.

22 Defendants.

Case No.: 2:19-cv-01047-KJD-VCF

STIPULATED JUDGMENT

23 WHEREAS Plaintiff State of Nevada, through its Attorney General
24 ("Plaintiff"), having initiated an investigation of Defendant UnitedHealth Group
25 Incorporated's ("United's") proposed acquisition of Defendant DaVita Medical

1 Holdings, LLC ("DaVita Medical")¹, filed a Complaint, as *parens patriae* on behalf of
2 and to protect the health and welfare of persons residing in Nevada, alleging
3 violations of Section 7 of the Clayton Act, 15 U.S.C. § 18; and

4 WHEREAS, Defendants agree that this Court has jurisdiction over them and
5 the subject matter in this action, solely for the purposes of this action and any
6 subsequent action to enforce this Judgment; and

7 WHEREAS, Defendants agree to be bound by the provisions of this Judgment
8 pending its approval by the Court and thereafter; and

9 WHEREAS, Defendants have agreed with the Federal Trade Commission to
10 an Agreement Containing Consent Order, including a Complaint, an Order to
11 Maintain Assets (the "OMA") and a Decision and Order (the "FTC Order") in a
12 Related Action (defined herein), which have all been provisionally accepted by the
13 Federal Trade Commission. The OMA and FTC Order are incorporated into this
14 Judgment and attached as Exhibits A and B hereto to address the allegations set
15 forth by Plaintiff in its Complaint;

16 NOW THEREFORE, before any testimony is taken, without trial or adjudication
17 of any issue of fact or law, without any admission or finding of wrongdoing or
18 violation of any law, and upon consent of the parties, it is ORDERED, ADJUDGED,
19 AND DECREED:

20 **I. JURISDICTION**

21 1. Defendant United is a corporation organized, existing, and doing
22 business under and by virtue of the laws of the State of Delaware with its executive
23 offices and principal place of business located at 9900 Bren Road East, Minnetonka,
24 Minnesota 55343.

25 ¹ This agreement is the *Equity Purchase Agreement* among DaVita Inc., Collaborative Care Holdings
26 LLC, and solely with respect to Section 9.3 and Section 9.18, UnitedHealth Group Incorporated
27 dated as of December 5, 2017, as amended by the *First Amendment to the Equity Purchase
Agreement* dated as of September 20, 2018, and the *Second Amendment to the Equity Purchase
Agreement* dated as of December 11, 2018.

2. Defendant Collaborative Care Holdings, LLC (“CC Holdings”) is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343.

3. Defendant DaVita Inc. ("DaVita") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2000 16th Street, Denver, Colorado 80202.

4. Defendant DaVita Medical is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of California with its executive offices and principal place of business located at 717 17th Street, Denver, Colorado 80202.

5. Defendants consent to this Court's jurisdiction over the subject matter of, and each of the parties to, this action, for the purpose of this action and any subsequent action to enforce this Judgment. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. DEFINITIONS

IT IS ORDERED that, as used in this Judgment, all defined terms used herein shall have the meanings prescribed in the FTC Order. In addition, the following definitions shall apply:

A. "Defendants" means United, CC Holdings, DaVita and DaVita Medical, individually and collectively.

B. "Nevada Assets To Be Divested" means all right, title and interest in and to the HealthCare Partners Nevada Assets and HealthCare Partners Nevada Licenses.

C. "Commission" means the Federal Trade Commission.

1 D. “Related Action” means the Commission’s 2018-2019 investigation of
2 Defendants involving United’s acquisition of DaVita Medical, and its subsequent
3 action, *In the Matter of UnitedHealth Group Incorporated; Collaborative Care*
4 *Holdings, LLC; DaVita Inc.; and DaVita Medical Holdings, LLC.*

5 **III. ASSET MAINTENANCE AND DIVESTITURE RELIEF**

6 **IT IS HEREBY ORDERED**, that:

7 A. Defendants shall comply with the OMA and with the FTC Order.

8 B. All HealthCare Partners Nevada Divestiture Agreements shall be
9 deemed incorporated by reference into this Judgment, and Defendants shall comply
10 with all such HealthCare Partners Nevada Divestiture Agreements to which they
11 are a party.

12 C. Defendants waive any objection to reports to the Commission by the
13 Monitor as required by Paragraph III of the OMA or Paragraph VIII of the FTC
14 Order, or by the Divestiture Trustee as required by Paragraph IX of the FTC Order,
15 also being provided to Plaintiff at the same time they are provided to the
16 Commission. Defendants further waive any objection to the Monitor consulting
17 with or disclosing any relevant information to Plaintiff so long as Plaintiff agrees to
18 maintain the confidentiality of such information to the fullest extent possible. In
19 the event of a disagreement or dispute between Defendants and the Monitor that
20 cannot be resolved, Defendants expressly permit the Monitor to seek the assistance
21 of the Antitrust Unit in the Office of the Nevada Attorney General’s Bureau of
22 Consumer Protection to resolve the issue.

23 D. For the duration of this Judgment, in the event the Commission
24 investigates whether the Defendants, or any of them, are complying with the OMA
25 and/or FTC Order, the Defendants agree to timely provide appropriate waivers that
26 allow Commission’s staff to freely communicate with Plaintiff about that
27 investigation.

IV. OTHER RELIEF

IT IS FURTHER ORDERED, that:

A. Any advance written notification to the Commission required by Paragraph X of the FTC Order shall also be provided to Plaintiff.

B. Said notification under this Paragraph shall be provided in writing, and shall include a brief description of the transaction, the parties to the transaction, the anticipated closing date, specificity of the Las Vegas Healthcare Provider and its location within the Geographic Territory, and the contact person for follow-up information requests. Notification shall be sent by electronic mail to Chief Deputy Mark Krueger, MKrueger@ag.nv.gov, Senior Deputy Lucas Tucker, LTucker@ag.nv.gov, and via overnight express delivery to the following address: State of Nevada, Office of Nevada Attorney General; Bureau of Consumer Protection; Attention: Antitrust Unit; 100 N. Carson St., Carson City, Nevada 89701. Defendants shall provide the notification to Plaintiff at least thirty (30) days prior to consummating any such transaction. To comply with this Paragraph, Defendants shall provide to Plaintiff the same notification on the same day that Defendant provides such notice(s) to the Commission pursuant to Paragraph X of the FTC Order.

C. Plaintiff may request further information from Defendants of a transaction reported under Paragraph IV(A) of this Judgment, subject to claims of privilege, undue burden or other rights Defendants may have in response to such requests. Such requests shall be made by Investigative Demands issued pursuant to the authority of this Judgment and Nev. Rev. Stat. § 598A.100. Nothing in this Paragraph IV shall waive, limit or compromise Plaintiff's authority and ability to pursue a subsequent enforcement action against Defendants for a transaction other than the transaction that is the subject of the Related Action that may violate state or federal law.

V. COMPLIANCE AND MONITORING

IT IS FURTHER ORDERED, that:

A. Defendants shall submit to Plaintiff copies of all verified written reports required to be submitted to the Commission by Paragraph IV of the OMA or Paragraph XI of the FTC Order, which copies shall be provided to the Plaintiff on the same day that Defendants provide their reports to the Commission. When Defendants provide to Plaintiff a copy of a verified written report submitted to the Commission, Defendants must state in such report that the report is responsive to and enforceable under the corresponding provisions of this Judgment.

B. If requested by Plaintiff, Defendants shall provide the name(s) of Defendants' employee(s) who provided and/or are responsible for providing information used and reviewed in support of the statements contained in the written reports of compliance, subject to claims of privilege asserted by Defendants.

VI. NOTICE AND NOTICE EVENTS

IT IS FURTHER ORDERED, that:

A. Any notice provided by Defendants to the Commission pursuant to Paragraph XII of the FTC Order shall also be provided to the Plaintiff on or about the same day such notice is provided to the Commission.

B. Any notices required by this Judgment shall be delivered to the parties at the following addresses:

1. For United:

D. LEE ROBERTS, JR., NV Bar No. 8877
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
lroberts@wwhgd.com

1 2. For CC Holdings:

2 D. LEE ROBERTS, JR., NV Bar No. 8877
3 WEINBERG, WHEELER, HUDGINS,
4 GUNN & DIAL, LLC
5 6385 S. Rainbow Blvd., Suite 400
6 Las Vegas, Nevada 89118
7 Telephone: (702) 938-3838
8 lroberts@wwhgd.com

9 3. For DaVita:

10 GREGORY A. BROWER, NV Bar No. 5232
11 Brownstein Hyatt Farber Schreck
12 100 North City Parkway
13 Las Vegas, Nevada 89106-4614
14 202.652.2340
15 gbrower@bhfs.com

16 4. For DaVita Medical, prior to closing of its sale to United:

17 GREGORY A. BROWER, NV Bar No. 5232
18 Brownstein Hyatt Farber Schreck
19 100 North City Parkway
20 Las Vegas, Nevada 89106-4614
21 202.652.2340
22 gbrower@bhfs.com

23 5. For DaVita Medical, after closing of its sale to United/CC Holdings:

24 D. LEE ROBERTS, JR., NV Bar No. 8877
25 WEINBERG, WHEELER, HUDGINS,
26 GUNN & DIAL, LLC
27 6385 S. Rainbow Blvd., Suite 400
28 Las Vegas, Nevada 89118
29 Telephone: (702) 938-3838
30 lroberts@wwhgd.com

31 6. For Plaintiff, to the same address listed in Paragraph IV(B).

32 Any party may change the name or address of the person to receive notice by
33 providing prior written notice to the other parties.

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**VII. PLAINTIFF'S RIGHTS OF
INVESTIGATION, INSPECTION AND EXAMINATION**

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3 **IT IS FURTHER ORDERED** that, for the purpose of determining or
securing compliance with this Judgment:

4 A. Plaintiff may issue an Investigative Demand pursuant to Nev. Rev.
5 Stat. § 598A.100. Defendants shall timely and fully comply with any such
6 Investigative Demands; and

7 B. Subject to any legally recognized privilege, upon written request and
8 upon five (5) days' notice to Defendants, Defendants shall permit any duly
9 authorized representative of Plaintiff

10 1. Access, during office hours of Defendants and in the presence of
11 counsel, to all facilities and access to inspect and copy all business and other records
12 and all documentary material and electronically stored information in the
13 possession or under the control of Defendants relating to compliance with this
14 Judgment, which copying services shall be provided by such Defendant at the
15 request of the authorized representative(s) of Plaintiff and at the expense of
16 Defendant; and

17 2. Without restraint or interference from Defendants, access to interview
18 officers, directors, or employees of Defendants, who may have counsel present,
19 regarding any such matters.

20 C. No information or documents obtained by Plaintiff as required by or
21 pursuant to this Judgment shall be divulged by Plaintiff to any person other than
22 the authorized representatives of Plaintiff, and their consultants, and, pursuant to
23 the waiver, the FTC, except in the course of legal proceedings as required by a court
24 of proper jurisdiction, or for the purpose of securing compliance with this Judgment,
25 or as otherwise required by law.

26 D. To the extent that the Plaintiff receives a Public Records Request for
27 any document or other writing or electronic record submitted or provided by a
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1 Defendant to Plaintiff pursuant to this Judgment, Plaintiff shall promptly give
2 written notice to the respective Defendant(s) of such request. If the Plaintiff
3 subsequently determines that any document should be produced to the party
4 making the Public Records Request, Plaintiff shall promptly give the Defendants
5 written notice of Plaintiff's determination, and an opportunity to inspect the
6 documents the Plaintiff intends to produce. Further, the Plaintiff shall not oppose
7 the Defendants' efforts to seek to injunctive relief preventing the disclosure before
8 any document is produced pursuant to the Public Records Act

VIII. VIOLATIONS AND ENFORCEMENT OF JUDGMENT

IT IS FURTHER ORDERED, that:

A. It shall be a violation of this Judgment if a Defendant fails to abide by the terms of this Judgment, the FTC Order and/or OMA.

B. Subject to the requirements of this Section, Plaintiff may petition the Court for relief as a result of a violation of this Judgment by filing a "Notice of Violation of Judgment" which shall set forth the alleged violation and the relief sought by Plaintiff.

C. For any violations of this Judgment committed by Defendant(s), Plaintiff may seek equitable and injunctive relief, with respect to the Nevada Assets To Be Divested, authorized by federal or state law that the Court deems appropriate, so long as such relief is consistent with the FTC Order.

D. All relief requested by Plaintiff for violation of the provisions of this Judgment shall be supported by evidence presented to the Court in whatever form required by the Court, applying substantive Nevada law in interpretation and enforcement.

E. Defendant(s) shall also pay to Plaintiff its reasonable attorneys' fees and costs incurred if Plaintiff is the prevailing party in a contested action to interpret, modify or enforce this Judgment.

1 F. Plaintiff shall not take enforcement action under this Judgment until
2 the following has occurred:

3 1. Plaintiff has given a Defendant notice of the alleged violation(s) in
4 writing within sixty (60) days of Plaintiff having reasonable cause to believe a
5 violation may have occurred. Plaintiff shall provide the Commission with a copy of
6 such notice at the same time Plaintiff issues its notice to Defendant;

7 2. Defendant has had a period of at least thirty (30) days to (a) respond to
8 and cure the alleged violation(s); and/or (b) provide written notice disputing the
9 alleged violation or presenting cure to Plaintiff;

10 3. The respective parties have had a period of twenty (20) days after
11 Defendant has provided notice of dispute or notice of cure to meet and confer
12 regarding the alleged violation(s) and the respective parties' responses. Such
13 meeting and conferral may occur in person, by telephone, or in writing in
14 compliance with the local rules of this court. Any party may request the
15 participation of the Commission's attorneys during any meetings and conferrals;

16 4. Defendant has had a period of at least thirty (30) days after the parties
17 have met and conferred on the alleged violation to (a) respond to and cure, or have
18 undertaken good faith efforts toward curing the alleged violation(s) if the violation
19 cannot reasonably be cured within thirty (30) days; and/or (b) provide written notice
20 of dispute regarding the alleged violation; and

21 5. Prior to the expiration of the thirty-day period provided in Section
22 VIII(F)(4), Plaintiff has agreed to meet and confer separately with the Commission
23 regarding the alleged violation(s), if the Commission requests such meetings and
24 conferrals.

25 G. If Defendant fails to respond under Section VIII(F)(2), or fails to meet
26 under Section VIII(F)(3), Plaintiff may immediately seek relief from the Court. The
27 respective parties may, but no party is required to, extend the timelines in this
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1 Paragraph by mutual consent in writing. Plaintiff may informally notify Defendant
2 of receipt of information alleging a violation of this Judgment if, in Plaintiff's
3 judgment, such notification could likely result in a prompt resolution of the alleged
4 violation.

5 **IX. CHANGES TO AND DIRECTIVES RESULTING FROM COMMISSION'S**
6 **DECISION AND ORDER**

7 **IT IS FURTHER ORDERED**, that from the date of entry of this Judgment,
8 if the Commission makes any changes to the FTC Order or OMA or issues further
9 directives pursuant to the FTC Order or OMA, and unless otherwise stipulated by
10 the parties to this Judgment, such changes and further directives are incorporated
11 into this Judgment.

12 **X. GENERAL PROVISIONS**

13 **IT IS FURTHER ORDERED**, that:

14 A. The remedies in this Judgment are in addition to all remedies
15 available to Plaintiff under federal and state law. Nothing in this Judgment shall
16 prohibit or in any way limit Plaintiff from seeking all damages, fines, penalties and
17 remedies for any Defendant's conduct, actions, transactions, mergers or acquisitions
18 that is/are otherwise unlawful under federal or state law, even if such conduct,
19 actions, transactions, mergers or acquisitions may also violate this Judgment.

20 B. This Judgment shall neither be construed nor interpreted as a
21 concession that Defendants have, or any of them has, violated any federal or state
22 law, nor that Defendants have adopted or agreed to any allegations in Plaintiff's
23 Complaint, except for the allegations relating to jurisdiction. Notwithstanding the
24 foregoing, the Parties agree to enter into this Judgment instead of litigating their
25 dispute.

26 C. This Judgment shall terminate on the earlier of (i) ten (10) years from
27 the date of entry; or (ii) upon the termination of the FTC Order; provided, however,

that this Judgment may remain in effect after completion of such period solely for the purpose of determining or enforcing compliance during its effective period.

3 D. This Court retains jurisdiction to enable any party to this Judgment to
4 apply to this Court at any time for further orders and directions as may be
5 necessary or appropriate to carry out or construe this Judgment, to modify any of its
6 provisions, to enforce compliance, and to punish violations of its provisions.

7 E. If any part of this Judgment is hereafter adjudged by this Court to be
8 unenforceable, the remaining provisions of this Judgment shall stay in full force
9 and effect.

10 BASED UPON THE RECORD BEFORE THIS COURT, the Court finds that
11 entry of this Judgment fair, equitable and in the public interest.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED: June 21, 2019